

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

RASHEEN NEWKIRK,

Petitioner,

v.

14-CR-0031-A

17-CV-1077-A

ORDER

UNITED STATES OF AMERICA,

Respondent.

Petitioner Rasheen Newkirk seeks to reopen the time within which to file a notice of appeal from the Court's March 22, 2018 Decision and Order (Docket No. 150), which denied Petitioner's habeas corpus petition. See Docket No. 153. In support of his request, Petitioner states that he never received a copy of the Court's Decision and Order because he was transferred from FCI Allenwood—the address to which the Court mailed its Decision and Order—to FCI Elkton four days after the Decision and Order was mailed to Petitioner. Thus, the Court's Decision and Order likely arrived at FCI Allenwood after Petitioner had been transferred, and Petitioner states that his mail was not forwarded to him at FCI Elkton.

Federal Rule of Appellate Procedure 4(a) "governs the time to appeal" an order denying a § 2255 motion. Section 2255 Rule 11(b). Thus, Petitioner's notice of appeal must have been filed "within 60 days after" the Court entered its order. Fed. R. App. P. 4(a)(1)(B)(i). The Court may, however, "reopen the time to file an appeal" if three conditions are met: (1) "the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the . . . order sought to be appealed within 21 days after entry"; (2) "the motion is filed within 180 days after the judgment or

order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier"; and (3) "the court finds that no party would be prejudiced." Fed. R. App. P. 4(a)(6).

Based on the statements in Petitioner's motion, the Court finds that each of these requirements has been met. Petitioner's motion to reopen (Docket No. 153) is therefore granted. Petitioner's motion was accompanied by a notice of appeal (Docket No. 153 at 6) from the Court's March 22, 2018 Decision and Order. The Clerk of Court is directed to file Petitioner's notice of appeal as a separate document and transmit the notice of appeal to the Clerk of Court for the Second Circuit.

SO ORDERED.

Dated: September 6, 2018
Buffalo, New York

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE